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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION
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12 GEORGE G. HAINES,) No. EDCV 06-1325 (CW)
13)
14 Plaintiff,) DECISION AND ORDER
15 v.)
16)
17 MICHAEL J. ASTRUE,)
Commissioner, Social Security)
Administration,)
18 Defendant.)
19 _____)

20 The parties have consented, under 28 U.S.C. § 636(c), to the
21 jurisdiction of the undersigned magistrate judge. Plaintiff seeks
22 review of the denial of disability benefits. The court finds that
23 judgment should be granted in favor of defendant, affirming the
24 Commissioner's decision.

25 I. BACKGROUND

26 Plaintiff George Haines was born on May 17, 1950, and was a
27 younger individual during the period relevant to his Social Security
28 disability application. [Administrative Record ("AR") 70.] He has a
college education and past relevant work experience as a driver. [AR

1 81.] Plaintiff alleges disability on the basis of a spinal cord
2 injury and severe manic depression. [AR 80.]

3 **II. PROCEEDINGS IN THIS COURT**

4 Plaintiff's complaint was lodged on November 22, 2006, and filed
5 on December 1, 2006. On June 8, 2006, defendant filed an answer and
6 plaintiff's Administrative Record ("AR"). On August 16, 2007, the
7 parties filed their Joint Stipulation ("JS") identifying matters not
8 in dispute, issues in dispute, the positions of the parties, and the
9 relief sought by each party. This matter has been taken under
10 submission without oral argument.

11 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

12 Plaintiff applied for a period of disability and disability
13 insurance benefits ("DIB") under Title II of the Social Security Act
14 on September 26, 2002, alleging disability since May 10, 1991. [AR
15 70.] After the application was denied initially and upon
16 reconsideration, plaintiff requested an administrative hearing, which
17 was held on October 17, 2003, before Administrative Law Judge ("ALJ")
18 David M. Ganly. [AR 502.] Plaintiff appeared with counsel and gave
19 testimony. [Id.] The hearing was continued for the purpose of
20 obtaining additional medical records. [AR 519.] A second hearing was
21 held on January 20, 2004, before ALJ Ganly. [AR 521.] Plaintiff
22 appeared with counsel, and testimony was taken from plaintiff and
23 medical expert Sami Nafsoosi. [Id.] A third hearing was held on
24 February 20, 2004, before ALJ Ganly. [AR 563.] Plaintiff appeared
25 with counsel, and testimony was taken from plaintiff, medical expert
26 Joseph Malancharuvil and vocational expert Sandra Fioretti. [Id.] The
27 ALJ denied benefits in a decision dated June 17, 2004. [AR 17.] When
28 the Appeals Council denied review on October 12, 2006, the ALJ's

1 decision became the Commissioner's final decision. [AR 3.]

2 IV. STANDARD OF REVIEW

3 Under 42 U.S.C. § 405(g), a district court may review the
4 Commissioner's decision to deny benefits. The Commissioner's (or
5 ALJ's) findings and decision should be upheld if they are free of
6 legal error and supported by substantial evidence. However, if the
7 court determines that a finding is based on legal error or is not
8 supported by substantial evidence in the record, the court may reject
9 the finding and set aside the decision to deny benefits. See Aukland
10 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.
11 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240
12 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,
13 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
14 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada
15 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

16 "Substantial evidence is more than a scintilla, but less than a
17 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
18 which a reasonable person might accept as adequate to support a
19 conclusion." Id. To determine whether substantial evidence supports
20 a finding, a court must review the administrative record as a whole,
21 "weighing both the evidence that supports and the evidence that
22 detracts from the Commissioner's conclusion." Id. "If the evidence
23 can reasonably support either affirming or reversing," the reviewing
24 court "may not substitute its judgment" for that of the Commissioner.
25 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

26 V. DISCUSSION

27 A. THE FIVE-STEP EVALUATION

28 To be eligible for disability benefits a claimant must

1 demonstrate a medically determinable impairment which prevents the
2 claimant from engaging in substantial gainful activity and which is
3 expected to result in death or to last for a continuous period of at
4 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at
5 721; 42 U.S.C. § 423(d)(1)(A).

6 Disability claims are evaluated using a five-step test:

7 Step one: Is the claimant engaging in substantial
8 gainful activity? If so, the claimant is found not
9 disabled. If not, proceed to step two.

10 Step two: Does the claimant have a "severe" impairment?
11 If so, proceed to step three. If not, then a finding of not
12 disabled is appropriate.

13 Step three: Does the claimant's impairment or
14 combination of impairments meet or equal an impairment
15 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If
16 so, the claimant is automatically determined disabled. If
17 not, proceed to step four.

18 Step four: Is the claimant capable of performing his
19 past work? If so, the claimant is not disabled. If not,
20 proceed to step five.

21 Step five: Does the claimant have the residual
22 functional capacity to perform any other work? If so, the
23 claimant is not disabled. If not, the claimant is disabled.

24 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended
25 April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107
26 S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20
27 C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or
28 "not disabled" at any step, there is no need to complete further
steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

Claimants have the burden of proof at steps one through four,
subject to the presumption that Social Security hearings are non-
adversarial, and to the Commissioner's affirmative duty to assist
claimants in fully developing the record even if they are represented
by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at
1288. If this burden is met, a prima facie case of disability is

made, and the burden shifts to the Commissioner (at step five) to prove that, considering residual functional capacity ("RFC")¹, age, education, and work experience, a claimant can perform other work which is available in significant numbers. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE

Here, the ALJ found that plaintiff had not engaged in substantial gainful activity during the period relevant to the disability determination (step one); that plaintiff had "severe" impairments, namely status post cervical laminectomy, depressive disorder not otherwise specified, and psychophysiological reaction to pain (step two); and that plaintiff did not have an impairment or combination of impairments that met or equaled a "listing" (step three). [AR 15-16.] Plaintiff was found to have an RFC for work at a medium exertional level, which precluded a return to his past relevant work (step four). [AR 16.] The vocational expert testified that a person with plaintiff's limitations could perform other work existing in significant numbers in the national economy, such as hand packager, cleaner and light assembler (step five). [Id.] Accordingly, plaintiff was found not "disabled" as defined by the Social Security Act. [AR 17.]

¹ Residual functional capacity measures what a claimant can still do despite existing "exertional" (strength-related) and "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to work without directly limiting strength, and include mental, sensory, postural, manipulative, and environmental limitations. Penny v. Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155 n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a nonexertional limitation. Penny, 2 F.3d at 959; Perminster v. Heckler, 765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 **C. ISSUES IN DISPUTE**

2 The parties' Joint Stipulation identifies three disputes issues:

- 3 1. Whether the ALJ properly considered plaintiff's medication
4 side effects;
- 5 2. Whether the ALJ properly considered plaintiff's need to use
6 a cane; and
- 7 3. Whether complete hypothetical questions were posed to the
8 vocational expert.

9 [JS 2-3.]

10 **D. ISSUES ONE AND TWO: MEDICATION SIDE EFFECTS AND THE USE OF
11 A CANE**

12 In 1991, plaintiff sustained a workplace injury when a loading
13 ramp malfunctioned and hit him on the neck. [AR 271.] He underwent a
14 cervical laminectomy soon after the accident. [AR 525.] There is no
15 contemporaneous medical record of these events; the medical record
16 commences four years after the injury occurred, in June 1995. [AR
17 462.] At that time, plaintiff entered an in-patient drug
18 rehabilitation program. [Id.] He was diagnosed with depression. [AR
19 450.] He also complained of recurrent pain in his lower neck. [AR
20 414, 418.] Plaintiff was last insured for the purpose of his DIB
21 claim on December 31, 1996. [AR 74.] Accordingly, disability must be
22 established prior to that date.²

23 Based on the available records dated on or before December 31,
24 1996, the ALJ determined that during the relevant period, plaintiff

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26 ² After plaintiff's insured status lapsed, in 1999, he suffered
27 a fall that aggravated his back condition. [AR 282.] He underwent
28 Thoracic 8 and partial Thoracic 9 laminectomy in September 1999 and a
 partial Thoracic 8 laminectomy in April 2000. [AR 296, 301.]
 Plaintiff continued to complain of persistent pain and depression
 following the surgeries. [AR 147.]

1 was capable of medium work activity with a limitation to moderately
2 complex, four to five step tasks in a habituated setting with no
3 intense interactions. [AR 14.] Plaintiff alleges that this RFC
4 finding is not supported by substantial evidence because it does not
5 take into account evidence of plaintiff's medication side effects and
6 his need to use a cane. [JS 3, 6.] Defendant argues that such
7 evidence was not relevant to the ALJ's decision because it was
8 subsequent to the date that plaintiff was last insured for purpose of
9 DIB eligibility. [JS 4, 7.]

10 "[I]ndividuals who apply for benefits under the Act after the
11 expiration of their insured status, for a disability that prevents
12 substantial gainful activity at the time of the application, must show
13 that the current disability has existed continuously since some time
14 on or before the date that their insured status lapsed." Flaten v.
15 Sec. of Health & Human Servs., 44 F.3d 1453, 1458 (9th Cir. 1995)
16 (rejecting a "relation back" theory of DIB eligibility); see also
17 Armstrong v. Comm'r of Social Sec. Admin., 160 F.3d 587, 589 (9th Cir.
18 1998); 42 U.S.C. § 423 (c). Any deterioration in a claimant's
19 condition subsequent to that time is "irrelevant" for the purpose of
20 the disability determination. Flaten, 44 F.3d at 1461 n. 4.

21 Here, the record contains little evidence to call into question
22 the ALJ's decision that plaintiff did not have a disability prior to
23 the date his insured status lapsed. In fact, there is almost no
24 medical record evidence concerning this period; the evidence that does
25 exist relates almost entirely to plaintiff's successful effort at drug
26 rehabilitation, with some mention of depression and back pain. [AR
27 399, 412.] As for plaintiff's allegation regarding his medication
28 side effects and need to use a cane, there is no evidence of such

1 limitations prior to the expiration of plaintiff's insured status; the
2 evidence cited by plaintiff in this regard post-dates his insured
3 status and is irrelevant to the disability determination. Flaten, 44
4 F.3d at 1461 n. 4. Accordingly, the Commissioner's ruling that
5 plaintiff is ineligible for disability benefits should be upheld.³

6 **V. ORDERS**

7 Accordingly, **IT IS ORDERED** that:

- 8 1. The decision of the Commissioner is **AFFIRMED**.
9 2. This action is **DISMISSED WITH PREJUDICE**.
10 3. The Clerk of the Court shall serve this Decision and Order
11 and the Judgment herein on all parties or counsel.

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13 DATED: October 4, 2007

14 _____/S/_____
15 CARLA M. WOHRLE
16 United States Magistrate Judge
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26 _____
27 ³ The third issue in dispute, regarding whether the hypothetical
28 questions posed to the vocational expert properly incorporated
plaintiff's medication side effects and his need to use a cane, is
without merit based on the discussion above.